

FIRST REGULAR SESSION

# SENATE BILL NO. 28

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DOLAN.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 191.905, RSMo, and to enact in lieu thereof one new section relating to multiple sclerosis.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 191.905, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 191.905, to read as follows:

191.905. 1. No health care provider shall knowingly make or cause to be made a false statement or false representation of a material fact in order to receive a health care payment, including but not limited to:

(1) Knowingly presenting to a health care payer a claim for a health care payment that falsely represents that the health care for which the health care payment is claimed was medically necessary, if in fact it was not;

(2) Knowingly concealing the occurrence of any event affecting an initial or continued right under a medical assistance program to have a health care payment made by a health care payer for providing health care;

(3) Knowingly concealing or failing to disclose any information with the intent to obtain a health care payment to which the health care provider or any other health care provider is not entitled, or to obtain a health care payment in an amount greater than that which the health care provider or any other health care provider is entitled;

(4) Knowingly presenting a claim to a health care payer that falsely indicates that any particular health care was provided to a person or persons, if in fact health care of lesser value than that described in the claim was provided.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

2. No person shall knowingly solicit or receive any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind in return for:

(1) Referring another person to a health care provider for the furnishing or arranging for the furnishing of any health care; or

(2) Purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any health care.

3. No person shall knowingly offer or pay any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce such person to refer another person to a health care provider for the furnishing or arranging for the furnishing of any health care.

4. Subsections 2 and 3 of this section shall not apply to a discount or other reduction in price obtained by a health care provider if the reduction in price is properly disclosed and appropriately reflected in the claim made by the health care provider to the health care payer, or any amount paid by an employer to an employee for employment in the provision of health care.

**5. Subsections 2 and 3 of this section shall not apply to programs established by pharmaceutical companies for the purposes of providing financial assistance to patients with chronic, potentially disabling or life-threatening conditions who have been prescribed disease-managing medicines for which there are no generic equivalents. Examples of providing financial assistance shall include but not be limited to a partial rebate of insurance co-payments.**

6. Exceptions to the provisions of subsections 2 and 3 of this [subsection] **section** shall be provided for as authorized in 42 U.S.C. Section 1320a-7b(3)(E), as may be from time to time amended, and regulations promulgated pursuant thereto.

[6.] 7. No person shall knowingly abuse a person receiving health care.

[7.] 8. A person who violates subsections 1 to 4 of this section is guilty of a class D felony upon his first conviction, and shall be guilty of a class C felony upon his second and subsequent convictions. A prior conviction shall be pleaded and proven as provided by section 558.021, RSMo. A person who violates subsection [6] 7 of this section shall be guilty of a class C felony, unless the act involves no physical, sexual or emotional harm or injury and the value of the property involved is less than five hundred dollars, in which event a violation of subsection [6] 7 of this section is a class A misdemeanor.

[8.] 9. Each separate false statement or false representation of a material fact proscribed by subsection 1 of this section or act proscribed by subsection 2 or 3 of this section shall constitute a separate offense and a separate violation of this section, whether or not made at the same or different times, as part of the same or separate episodes, as part of the same scheme or course of conduct, or as part of the same claim.

[9.] 10. In a prosecution pursuant to subsection 1 of this section, circumstantial evidence may be presented to demonstrate that a false statement or claim was knowingly made. Such evidence of knowledge may include but shall not be limited to the following:

(1) A claim for a health care payment submitted with the health care provider's actual, facsimile, stamped, typewritten or similar signature on the claim for health care payment;

(2) A claim for a health care payment submitted by means of computer billing tapes or other electronic means;

(3) A course of conduct involving other false claims submitted to this or any other health care payer.

[10.] 11. Any person convicted of a violation of this section, in addition to any fines, penalties or sentences imposed by law, shall be required to make restitution to the federal and state governments, in an amount at least equal to that unlawfully paid to or by the person, and shall be required to reimburse the reasonable costs attributable to the investigation and prosecution pursuant to sections 191.900 to 191.910. All of such restitution shall be paid and deposited to the credit of the "Medicaid Fraud Reimbursement Fund", which is hereby established in the state treasury. Moneys in the Medicaid fraud reimbursement fund shall be divided and appropriated to the federal government and affected state agencies in order to refund moneys falsely obtained from the federal and state governments. All of such cost reimbursements attributable to the investigation and prosecution shall be paid and deposited to the credit of the "Medicaid Fraud Prosecution Revolving Fund", which is hereby established in the state treasury. Moneys in the Medicaid fraud prosecution revolving fund may be appropriated to the attorney general, or to any prosecuting or circuit attorney who has successfully prosecuted an action for a violation of sections 191.900 to 191.910 and been awarded such costs of prosecution, in order to defray the costs of the attorney general and any such prosecuting or circuit attorney in connection with their duties provided by sections 191.900 to 191.910. No moneys shall be

paid into the Medicaid fraud protection revolving fund pursuant to this subsection unless the attorney general or appropriate prosecuting or circuit attorney shall have commenced a prosecution pursuant to this section, and the court finds in its discretion that payment of attorneys' fees and investigative costs is appropriate under all the circumstances, and the attorney general and prosecuting or circuit attorney shall prove to the court those expenses which were reasonable and necessary to the investigation and prosecution of such case, and the court approves such expenses as being reasonable and necessary. The provisions of section 33.080, RSMo, notwithstanding, moneys in the Medicaid fraud prosecution revolving fund shall not lapse at the end of the biennium.

[11.] **12.** A person who violates subsections 1 to 4 of this section shall be liable for a civil penalty of not less than five thousand dollars and not more than ten thousand dollars for each separate act in violation of such subsections, plus three times the amount of damages which the state and federal government sustained because of the act of that person, except that the court may assess not more than two times the amount of damages which the state and federal government sustained because of the act of the person, if the court finds:

(1) The person committing the violation of this section furnished personnel employed by the attorney general and responsible for investigating violations of sections 191.900 to 191.910 with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the personnel of the attorney general with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

[12.] **13.** Upon conviction pursuant to this section, the prosecution authority shall provide written notification of the conviction to all regulatory or disciplinary agencies with authority over the conduct of the defendant health care provider.

[13.] **14.** The attorney general may bring a civil action against any person who shall receive a health care payment as a result of a false statement or false representation of a material fact made or caused to be made by that person. The

person shall be liable for up to double the amount of all payments received by that person based upon the false statement or false representation of a material fact, and the reasonable costs attributable to the prosecution of the civil action. All such restitution shall be paid and deposited to the credit of the Medicaid fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to the credit of the Medicaid fraud prosecution revolving fund. No reimbursement of such costs attributable to the prosecution of the civil action shall be made or allowed except with the approval of the court having jurisdiction of the civil action. No civil action provided by this subsection shall be brought if restitution and civil penalties provided by subsections [10 and] 11 **and 12** of this section have been previously ordered against the person for the same cause of action.

**15. Nothing within in this section shall be construed to prohibit certain non-profit organizations, which have more than five years experience in serving their members with chronic, potentially debilitating, or life-threatening illnesses, from arranging, seeking or promoting access for their members to needed medical care, medical equipment or medications or from referring their members to physicians, nurses or other health care personnel that can assist the members with needed medical care, medical equipment or medications.**

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